

REMARKS

Applicant submits that this Amendment After Final Rejection places this application in condition for allowance by amending claims in manners that are believed to render all pending claims allowable over the cited art and/or at least place this application in better form for appeal. This Amendment is necessary to clarify certain claim limitations and was not earlier presented because Applicant believed that the prior response(s) placed this application in condition for allowance, for at least the reasons discussed in those responses. Accordingly, entry of the present Amendment, as an earnest attempt to advance prosecution and/or to reduce the number of issues, is requested under 37 C.F.R. §1.116.

In the event that the Office declines to enter the present Amendment, and (i) any portion of the present Amendment would place some of the claims in better form for appeal if a separate paper were filed containing only such amendments or (ii) any proposed amendment to any claim would render that claim allowable, Applicant respectfully requests that the Office inform Applicant of the same pursuant to MPEP §714.13.

By this amendment, claims 1, 3, 11, 12 and 14-19 have been amended, as will be explained further herein. Claims 1-20 remain in the application. This application has been carefully considered in connection with the Examiner's Action. Reconsideration, withdrawal of the final action, and allowance of the application, as amended, is respectfully requested.

Rejection under 35 U.S.C. §112

Claims 3, 15, 17 and 19

Claim 3, 15, 17 and 19 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The office action states that the claim(s) contains subject matter which was not described in the specification in such a

way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

With respect to claim 3, support for the limitation “wherein the number of images that are selected to be incorporated in the icon is not fixed, but is an adapted number based on the determined relative importance (I_1, \dots, I_N) of each image (1, 2, ... N)” can be found in the specification on **page 3, lines 6-10** of the application as originally filed (which corresponds to paragraph **[0023]** of the published application). Accordingly, claim 3 complies with the enablement requirement. Withdrawal of the rejection is respectfully requested. (While not rejected in the office action, claims 16 and 18 contain limitations similar to those of claim 3. Accordingly, claims 16 and 18 have been amended herein in a manner similar to the amendments of claim 3.)

With respect to claims 15, 17 and 19, each of the respective claims have been amended to recite “wherein the number of images incorporated in the icon is selected based on a sum of the importance of each of the images included in the icon being minimal a certain predetermined value.” Support for this amendment can be found in the specification on **page 7, lines 8-10** of the application as originally filed (which corresponds to paragraph **[0068]** of the published application). Accordingly, claims 15, 17 and 19 each comply with the enablement requirement. Withdrawal of the rejection is respectfully requested.

Claims 1-20

Claim 1-20 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

By this amendment, each of claims 1, 3, 11, 12, 14, 15, 16 and 18 have been amended to remove the indefinite recitation of “adapted to” (as that recitation was previously presented in the respective claims) from each respective claim. With respect

to claims 2, 4-10, 13, 17 and 19-20, it is respectfully submitted that they are believed to not contain any indefinite recitations.

In addition, the Office Action on **page 4, lines 8-10** indicates "Claim 13, for example, recites the word "comprising" numerous times. It is therefore unclear where the preamble ends and where the body of the claim starts. Other independent claims have similar issues." With respect to dependent claim 13 of the present application, it is noted that the term "comprising" occurs only once therein. Upon a closer review, the term "comprising" occurs only once within each of claims 1, 10, 11, 12, 13 and 14.

Accordingly, in view of the above remarks, claims 1-20 are no longer believed indefinite. Withdrawal of the rejection is respectfully requested.

Rejection under 35 U.S.C. §102

Claim 1:

Claim 1 recites a method for creating an icon, the method comprising:

determining a relative importance (I_1, \dots, I_N) of each image (1, 2, ... N) of a group of images, wherein the group of images includes a plurality of images (1,2,..., N), wherein the relative importance I_i (for $i = 1$ to N) of each image of the plurality of images (1,2,..., N) is a number between 0 and 1; and

generating the icon, wherein the icon comprises a graphic in a graphical user interface to represent the group of images, wherein the graphic is composed of an adapted selection of images selected from the group of images based on the determined relative importance of each image of the group of images.

Support for claim 1 (as well as for claims 11, 12 and 14) can be found in the specification at least on *page 1, lines 8 and 18-24; page 3, line 9-10; page 5, lines 22-23; page 6, lines 16-19; page 7, lines 8-10 (corresponding to paragraphs [0003]-[0005]; [0023]; [0051]; [0063]; and [0068] of the published application); and FIGs. 1a, 1b, 2a and 2b.*

As presented herein, claim 1 has been clarified to more clearly articulate the novel and non-obvious method for creating an icon. Claim 1 contains the recitation of “generating the icon, wherein the icon comprises a graphic in a graphical user interface to represent the group of images” within the body of the claim and thus should be afforded patentable weight. The number of images selected to be included in the icon is not fixed, but is adapted to the determined relative importance (See, for example, the present specification on *page 3, lines 9-10* (corresponding to paragraph **[0023]** of the published application)). A relative importance I_i (for $i = 1$ to N) of each image of the group of images is determined and is a number between 0 and 1. In one embodiment, selection of the number of images to be incorporated into the created icon is based on a requirement that the sum of the relative importance of each of the images selected to be included in the icon is minimal a certain predetermined value (See, for example, the present specification on *page 7, lines 9-10* (corresponding to paragraph **[0068]** of the published application)). Accordingly, the method of claim 1 advantageously enables automatic generation of an icon that comprises a graphic in a graphical user interface to represent a group of images.

Claims 1-20 were rejected under 35 U.S.C. §102(e) as being anticipated by Matraszek et al (U.S. PAP 2003/0117651; hereafter “**Matraszek**”). With respect to claim 1, Applicant respectfully traverses this rejection for at least the following reasons.

Independent claim 1 recites, inter alia, “... generating [an] icon, wherein the icon comprises a *graphic in a graphical user interface to represent the group of images*, wherein the *graphic* is composed of *an adapted selection of images selected from the group of images based on the determined relative importance of each image ...* .”

The PTO provides in MPEP § 2131 that

“[t]o anticipate a claim, the reference must teach every element of the claim....”

Therefore, with respect to claim 1, to sustain this rejection the **Matraszek** reference must contain all of the above claimed elements of the respective claims.

The Office Action contends that the computer system of **Matraszek** automatically creating an *album* page of the five most favorite images meets the limitation of “generating an icon composed of the selection of images based on the determined relative importance of each image of the group of images” of the previously presented independent claim 1 (See the Office Action, page 5). This contention is respectfully traversed.

Contrary to the examiner’s position that all elements are disclosed in the **Matraszek** reference, the **Matraszek** reference does not disclose at least the aforementioned feature of independent claim 1. Therefore, the rejection is not supported by the **Matraszek** reference and should be withdrawn.

In contrast, and as discussed in remarks of the previously filed response, the **Matraszek** reference relates to a method for using *affective information recorded with* digital images for producing an *album page*. **Matraszek** expressly teaches that an example of affective information is a “tag” or “flag”, associated with an image, which indicates *whether or not the image has been identified* as a “favorite” or “important” image for the user. In addition, **Matraszek** expressly teaches that “images can be classified between a range of -10 to 10, where 0 is used for an unclassified image” (emphasis added, see **Matraszek** at paragraph [0026]). The absence of such a tag indicates that the image has not been identified as a favorite or important image for the user (emphasis added, see **Matraszek**, for example, at paragraph [0026]). In addition, one example of an album page containing five images is shown in FIG. 7A of **Matraszek**. However, it is submitted that the album page of FIG. 7A cannot reasonably be interpreted to disclose the aforementioned feature of independent claim 1 as now presented.

Accordingly, favorable reconsideration and withdrawal of the rejection of

independent claim 1 under 35 U.S.C. §102(e) are respectfully requested. Claims 2-10 and 15 depend from and further limit allowable independent claim 1 and therefore are allowable as well. The 35 U.S.C. §102(e) rejection thereof has now been overcome. Withdrawal of the rejection is respectfully requested.

Claim 11 contains limitations similar to those of claim 1. Accordingly, for similar reasons as stated with respect to overcoming the rejection of claim 1, claim 11 is believed allowable and an early formal notice thereof is requested. The 35 U.S.C. §102(e) rejection thereof has now been overcome. Withdrawal of the rejection is respectfully requested.

Claim 12 contains limitations similar to those of claim 1. Accordingly, for similar reasons as stated with respect to overcoming the rejection of claim 1, claim 12 is believed allowable and an early formal notice thereof is requested. Claims 13, 16 and 17 depend from and further limit allowable independent claim 12 and therefore are allowable as well. The 35 U.S.C. §102(e) rejection thereof has now been overcome. Withdrawal of the rejection is respectfully requested.

Claim 14 contains limitations similar to those of claim 1. Accordingly, for similar reasons as stated with respect to overcoming the rejection of claim 1, claim 14 is believed allowable and an early formal notice thereof is requested. Claims 18-20 depend from and further limit independent claim 14 and therefore are allowable as well. The 35 U.S.C. §102(e) rejection thereof has now been overcome. Withdrawal of the rejection is respectfully requested.

Conclusion

Except as indicated herein, the claims were not amended in order to address issues of patentability and Applicants respectfully reserve all rights they may have under

the Doctrine of Equivalents. Applicants furthermore reserve their right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or a continuation application. In addition, the Office Action contains a number of statements characterizing the claims, the Specification, and the prior art. Regardless of whether such statements are addressed by Applicant, Applicant refuses to subscribe to any of these statements, unless expressly indicated by Applicant.

It is clear from all of the foregoing that independent claims 1, 11, 12 and 14 are in condition for allowance. Claims 2-10 and 15 depend from and further limit claim 1 and therefore are allowable as well. Claim 13 and 16-17 depend from and further limit claim 12 and therefore are allowable as well. Claim 18-20 depend from and further limit claim 14 and therefore are allowable as well.

The matters identified in the Office Action of March 9, 2010 are now believed resolved. Accordingly, the application is believed to be in proper condition for allowance. The amendments herein are fully supported by the original specification and drawings; therefore, no new matter is introduced. Withdrawal of the final action and issuance of an early formal notice of allowance of claims 1-20 is requested.

Respectfully submitted,

By: /Michael J. Balconi-Lamica/

Michael J. Balconi-Lamica
Registration No. 34,291
for Edward Goodman, Reg. No. 28,613

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Philips Intellectual Property & Standards
345 Scarborough Road
Briarcliff Manor, New York 10510
Telephone: 914-333-9611
Facsimile: 914-332-0615
File: NL040199US1